

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

ANTHONY GRIFFIN,

*Plaintiff,*

V.

SEBRING CAPITAL PARTNERS, U.S. BANK  
AS TRUSTEE, BANK OF AMERICA, N.A.  
AND MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.,

*Defendants.*



CIVIL ACTION H-19-3679

## ORDER

Pending before the court is defendants U.S. Bank as Trustee’s (“U.S. Bank”), Bank of America, N.A.’s (“BANA”), and Mortgage Electronic Registration Systems, Inc.’s (“MERS”) (collectively, the “Summary Judgment Defendants”) motion for summary judgment (Dkt. 14).<sup>1</sup> Plaintiff Anthony Griffin has not responded. After reviewing the motion, evidentiary record, and applicable law, the court is of the opinion that the Summary Judgment Defendants’ motion for summary judgment should be GRANTED.

According to the local rules, a failure to timely respond to a pending motion “will be taken as a representation of no opposition.” S.D. Tex. L. R. 7.4. Nevertheless, a “motion for summary judgment cannot be granted simply because there is no opposition, even if failure to oppose violated a local rule.” *Hetzel v. Bethlehem Steel Corp.*, 50 F.3d 360, 362 n.3 (5th Cir. 1995) (citing *Hibernia Nat’l Bank v. Admin. Cent. Sociedad Anonima*, 776 F.2d 1277, 1279 (5th Cir. 1985)). “The movant has the burden of establishing the absence of a genuine issue of material fact and,

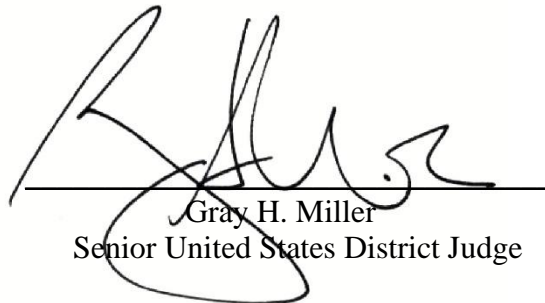
<sup>1</sup> As explained by the Summary Judgment Defendants in their notice of removal, Sebring Capital Partners is a nonexistent entity that has never been served and has not made an appearance in this case. Dkt. 1 at 3. Therefore, all of Griffin's claims against Sebring Capital Partners are DISMISSED WITHOUT PREJUDICE.

unless he has done so, the court may not grant the motion, regardless of whether any response was filed.” *See Hetzel*, 50 F.3d at 362 n.3. However, a district court may accept as undisputed the facts set forth in the motion. *See Eversley v. MBank Dallas*, 843 F.2d 172, 174 (5th Cir. 1988).

The court has examined the record and applicable law and is satisfied that, for the reasons set forth in the Summary Judgment Defendants’ motion for summary judgment, no genuine issue of material fact exists. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548 (1986); *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc).

Accordingly, the Summary Judgment Defendants’ motion for summary judgment (Dkt. 14) is GRANTED and all claims against U.S. Bank, BANA, and MERS are DISMISSED WITH PREJUDICE.

Signed at Houston, Texas on January 25, 2021.



Gray H. Miller  
Senior United States District Judge